



Monday, June 12, 2023

## **HFSC GOP Focuses on Repealing CFPB Small-Business Reg**

The only bill set for HFSC's Wednesday's hearing with CFPB Director Chopra is a resolution under the Congressional Review Act to reverse the agency's controversial small-business [reporting rule](#). This is likely to pass the House by a narrow majority but fail in the Senate. The dearth of legislation does not, of course, mean that the hearing has nothing else to talk about. We expect it to be more than lively, with Republicans strongly contesting the Bureau's structure, constitutionality, and actions while Democrats defend it on most, if not all, counts. Given recent bank failures and the key role of the FDIC on which Mr. Chopra sits, bank policy and deposit insurance are also on the agenda. We will provide clients with in-depth reports on both this hearing as well as the companion Senate Banking session. We will also advise if Mr. Chopra's testimony, as usual, provides insights into new policies, enforcement actions, and forthcoming rules.

## **Chopra: Data-Rights Standards to Ensure Consumer Choice**

In a blog post today, [CFPB director Chopra previewed](#) an issue sure to be discussed at this week's hearings: open banking and the pending data-rights rule. This will, he says, be proposed shortly and finalized next year. The agency's goal will be to prevent "powerful incumbents" from limiting consumer choice, although the director is mindful that the agency not "micro-manage" the transition. Voluntary standard-setting will thus be critical to a balanced, fair regime as long as powerful firms also do not control these standards. No specific standards or organizations are named, but the post indicates that the rule will require standard-setters to "discuss" plans with the Bureau. We surmise that some form of prior notice and/or approval process will be mandated in an effort to ensure transparent, CFPB-acceptable standards in terms of public welfare. Whether these standards will also address issues such as cyber-resilience, conflicts of interest, and privacy is not made clear.

## **GOP Endorses GAO Recommendations; Dems Point To Bank Management**

At today's HFSC Oversight Subcommittee hearing on the GAO's report ([see Client Report REFORM223](#)), Subcommittee Chair Huizenga (R-MI) built the case that the Fed has historically been unable to properly supervise troubled banks and noted that the committee will investigate this along with the Systemic-Risk Exception used in recent failures. Subcommittee Ranking Member Green (D-TX) emphasized that supervision was not the root cause of the failures and that Trump-era deregulation allowed mismanagement to fester. Full Committee Ranking Member Waters (D-CA) also emphasized management culpability, reiterating the call for compensation clawbacks. GAO Director of Financial Markets and Community Investment Michael Clements largely reiterated the failures' timeline, repeating GAO's recommendation for trigger mechanisms in revised PCA standards. The hearing was largely hijacked by the debt ceiling crisis, with GOP on-topic questioning focused on the Fed's reluctance to escalate its risk management concerns. Democrats were most interested in keeping the blame focused on bank mismanagement and holding failed bank executives accountable.

Rep. Rose (R-TN) voiced concern that the FDIC capping its potential gains on selling SVB's bridge bank incentivizes purchasing banks to wait until a troubled bank goes into conservatorship to get a better deal. He also asked the director if he would commit to reviewing FSOC's actions during the bank failures; Mr. Clements stated that there is already ongoing work but reminded Mr. Rose that FSOC's recommendations are nonbinding.

## McHenry Tries New Tack to Counter Beneficial-Ownership Reports

HFSC Chairman McHenry (R-NC) today [introduced legislation](#) to redesign FinCEN in part to overturn aspects of the beneficial-ownership rule he has long opposed. The bill would make the FinCEN head subject to Presidential appointment and Senate confirmation, with separate legislation delaying implementation of small-business ownership reports until FinCEN has completed several related rulemakings. It is unclear if Mr. McHenry will convene hearings on this bill or simply bring it to mark-up in light of [prior hearings](#) with FinCEN and interested parties. Democrats will oppose the small-business reporting bill but could accept the new leadership structure.

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### Recent Files Available for Downloading

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The following reports and analyses have been sent to retainer clients recently. Copies are also available to retainer clients on the Archives section of Federal Financial Analytics' website: [www.fedfin.com](http://www.fedfin.com) or clients may obtain the reports/analyses by e-mailing [info@fedfin.com](mailto:info@fedfin.com) giving the requested item name, firm, and e-mail address. To learn more about *GSE Activity Reports*, click [here](#).

- **[VENDOR10](#)**: After frequently citing third-party relationships and outsourcing as worrisome risk, the banking agencies have now finalized guidance first proposed in 2021 to govern them.
- **[GSE-060823](#)**: As we will detail in a forthcoming in-depth report, the banking agencies' new "guidance" on third-party vendors essentially brings all nonbank counterparties with whom banking organizations deal under the agencies' enforcement thumb.
- **[COMPENSATION36](#)**: Sen. Warren (D-MA) has introduced a revised version of legislation to ensure that both the FDIC and other federal banking agencies can demand that executives and others governing failed banks refund direct and indirect compensation to the federal government.
- **[GSE-060223](#)**: As we detailed earlier this [week](#), the OCC's new enforcement [policy](#) is a paradigm shift in terms of the legal and reputational risk run by national banks and federal thrifts – that is, by the depository institutions that matter the most to mortgage finance.
- **[CHINA17](#)**: While largely focused on countering fentanyl, today's Senate Banking hearing on China, saw Committee Democrats try to ascertain the details of a potential outbound investment [executive order](#) and Republicans addressing what they believe to be shortcomings in data privacy, AML regulation, and sanctions policy.
- **[SUPERVISION2](#)**: Following a speech earlier this year by the Acting Comptroller arguing that some banks are "too big to manage" and the furor caused by recent failures, the OCC has significantly revised its enforcement policy.
- **[GSE-052323](#)**: Today's HFSC hearing with Sandra Thompson was the anti-LLPA event we [anticipated](#) when it came to Republicans that also saw the stout defense Democrats were sure to provide combined with FHFA's resolute stand on doing nothing to change the LLPAs or guarantee-fees beyond what might come of the pending [RFI](#).
- **[REFORM226](#)**: Describing the CEOs' statements at his last hearing as "the dog-ate-my-homework" excuses for grievous failings, Senate Banking Committee Chairman Brown (D-OH) also attacked Republicans for placing blame on monetary policy, not the culture of supervisory laxity he details with various quotes from Trump Administration officials.
- **[CRYPTO44](#)**: Although there were still considerable party-line differences of opinion on stablecoin legislation, today's HFSC Digital-Assets Subcommittee hearing suggests that remaining divides are

narrowing, increasing the odds of a new federal-regulatory framework.

- **[GSE-051723](#)**: With Republicans on the anti-LLPA warpath, FHFA is hoping to preserve as much of the current fee structure as possible without paying too high a political price, issuing a [request for information](#) (RFI) in hopes that letter-writing will keep everyone busy until Congress moves on to other matters.
- **[REFORM225](#)**: A joint hearing today of HFSC's Financial Institutions and Oversight Subcommittees expanded on themes at yesterday's full Committee session with bank regulators ([see Client Report REFORM224](#)) and Senate Banking's session with SVB's and SBNY's [CEOs](#), with First Republic's CEO now added to the Congressional firing line.
- **[REFORM224](#)**: In their first appearance following the reports on recent failures, FRB Vice Chairman Barr and FDIC Chairman Gruenberg were harshly criticized by Republicans for both the bank failures and recommended remedies.
- **[DEPOSITINSURANCE120](#)**: As the law requires and the FDIC Chairman promised after SVB and Signature Bank were declared systemic, the FDIC has now proposed a special assessment to compensate the Deposit Insurance Fund (DIF) for the cost of backing the two banks' uninsured deposits.